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DEPARTMENT OF STATE

Public Notice: 9881

Notice of Receipt of TransCanada Keystone Pipeline, L.P.'s Re-Application for a
Presidential Permit to Construct, Connect, Operate, and Maintain Pipeline Facilities on
the Border of the United States and Canada

AGENCY: Department of State

ACTION: Notice

SUMMARY: TransCanada Keystone Pipeline, L.P. ("TransCanada") applied on May 4, 2012 to the U.S. Department of State ("Department") for a Presidential Permit that would authorize the construction, connection, operation, and maintenance of pipeline facilities on the U.S./Canadian border in Phillips County, Montana for the importation of crude oil. The border facilities would be part of a proposed 875-mile pipeline and related facilities (the Keystone XL project) that is designed to transport up to 830,000 barrels per day of crude oil from Alberta, Canada and the Bakken shale formation in North Dakota and Montana. The pipeline would cross the U.S. border near Morgan, Montana and continue through Montana, North Dakota, South Dakota, and Nebraska, where it would connect to existing pipeline facilities near Steele City, Nebraska for onward delivery to Cushing, Oklahoma and the U.S. Gulf Coast Region.

On November 6, 2015, the Department announced the Secretary of State's determination under Executive Order 13337 that issuing a Presidential Permit to TransCanada for the proposed Keystone XL pipeline's border facilities would not serve

the national interest, and denied the Permit application. On January 24, 2017, President Donald J. Trump issued a Presidential Memorandum (the “Presidential Memorandum”) on the Construction of the Keystone XL Pipeline which, *inter alia*, invited TransCanada “to re-submit its application to the Department of State for a Presidential permit for the construction and operation of the Keystone XL Pipeline....” The Presidential Memorandum is reproduced in its entirety at the end of this notice.

The Department has received a re-submitted application from TransCanada and will conduct a review of the application in accordance with the Presidential Memorandum and any other applicable requirements.

On February 5, 2014, the Department invited members of the public to comment on any factor they deem relevant to the national interest determination that will be made for the Keystone XL project application (79 FR 6984) and it is not inviting further public comment at this time.

Background information related to the application, including a copy of TransCanada’s re-submitted application may be found at <http://www.keystonepipeline-xl.state.gov>.

FOR FURTHER INFORMATION, CONTACT:

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Bureau of Energy Resources

Department of State

Presidential Memorandum Regarding Construction of the Keystone XL Pipeline

MEMORANDUM FOR THE SECRETARY OF STATE

THE SECRETARY OF THE ARMY

THE SECRETARY OF THE INTERIOR

SUBJECT: Construction of the Keystone XL Pipeline

Section 1. Policy. In accordance with Executive Order 11423 of August 16, 1968, as amended, and Executive Order 13337 of April 30, 2004, the Secretary of State has delegated authority to receive applications for Presidential permits for the construction, connection, operation, or maintenance, at the borders of the United States, of facilities for the exportation or importation of petroleum, petroleum products, coal, or other fuels to or from a foreign country, and to issue or deny such Presidential permits. As set forth in those Executive Orders, the Secretary of State should issue a Presidential permit for any cross-border pipeline project that "would serve the national interest."

Accordingly, pursuant to the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct as follows:

Sec. 2. Invitation to Submit an Application. I hereby invite TransCanada Keystone Pipeline, L.P. (TransCanada), to promptly re-submit its application to the Department of State for a Presidential permit for the construction and operation of the Keystone XL Pipeline, a major pipeline for the importation of petroleum from Canada to the United States.

Sec. 3. Directives. (a) Department of State. The Secretary of State shall, if the application referred to in section 2 is submitted, receive the application and take all actions necessary and appropriate to facilitate its expeditious review. With respect to that review, I hereby direct as follows:

(i) The Secretary of State shall reach a final permitting determination, including a final decision as to any conditions on issuance of the permit that are necessary or appropriate to serve the national interest, within 60 days of TransCanada's submission of the permit application.

(ii) To the maximum extent permitted by law, the Final Supplemental Environmental Impact Statement issued by the Department of State in January 2014 regarding the Keystone XL Pipeline (Final Supplemental EIS) and the environmental analysis, consultation, and review described in that document (including appendices) shall be considered by the Secretary of State to satisfy the following with respect to the Keystone XL Pipeline as described in TransCanada's permit application to the Department of State of May 4, 2012:

(A) all applicable requirements of the National Environmental Policy Act of 1969, 42

U.S.C. 4321 et seq.; and

(B) any other provision of law that requires executive department consultation or review (including the consultation or review required under section 7(a) of the Endangered Species Act of 1973, 16 U.S.C. 1536(a)).

(iii) To the maximum extent permitted by law, any Federal permit or authorization issued before the date of this memorandum for the Keystone XL Pipeline shall remain in effect until the completion of the project.

(iv) The agency notification and fifteen-day delay requirements of sections 1(g), 1(h), and 1(i) of Executive Order 13337 are hereby waived on the basis that, under the circumstances, observance of these requirements would be unnecessary, unwarranted, and a waste of resources.

(b) Department of the Army. The Secretary of the Army shall, if the application referred to in section 2 is submitted and a Presidential permit issued, instruct the Assistant Secretary of the Army for Civil Works and the U.S. Army Corps of Engineers, including the Commanding General and Chief of Engineers, to take all actions necessary and appropriate to review and approve as warranted, in an expedited manner, requests for authorization to utilize Nationwide Permit 12 under section 404(e) of the Clean Water Act, 33 U.S.C. 1344(e), with respect to crossings of the "waters of the United States" by the Keystone XL Pipeline, to the maximum extent permitted by law.

(c) Department of the Interior. The Secretary of the Interior, as well as the Directors of the Bureau of Land Management and the United States Fish and Wildlife Service, shall, if the application referred to in section 2 is submitted and a Presidential permit issued, take all steps necessary and appropriate to review and approve as warranted, in an expedited

manner, requests for approvals related to the Keystone XL Pipeline, to the maximum extent permitted by law, including: (i) requests for grants of right-of-way and temporary use permits from the Bureau of Land Management; (ii) requests under the United States Fish and Wildlife Service's regulations implementing the Migratory Bird Treaty Act, 16 U.S.C. 703 et seq.; and (iii) requests for approvals or other relief related to other applicable laws and regulations.

(d) Publication. The Secretary of State shall promptly provide a copy of this memorandum to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Majority Leader of the Senate, and the Governors of each State located along the Keystone XL Pipeline route as described in TransCanada's application of May 4, 2012. The Secretary of State is authorized and directed to publish this memorandum in the Federal Register.

(e) Private Property. Nothing in this memorandum alters any Federal, State, or local process or condition in effect on the date of this memorandum that is necessary to secure access from an owner of private property to construct the pipeline and cross-border facilities described herein. Land or an interest in land for the pipeline and cross-border facilities described herein may only be acquired consistently with the Constitution and applicable State laws.

Sec. 4. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof;
- or
- (ii) the functions of the Director of the Office of Management and Budget relating to

budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Donald J. Trump

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